



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes

For the landlord: OPR MNR MNSD FF
For the tenant: MT CNR FF

Introduction

This hearing was convened as a result of the cross applications of the parties for dispute resolution under the *Residential Tenancy Act* (the “*Act*”).

The landlord applied for an order of possession for unpaid rent or utilities, for a monetary order unpaid rent or utilities, for authorization to keep all or part of the security deposit, and to recover the filing fee.

The tenants applied for more time to make an application to cancel a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities (the “10 Day Notice”), to cancel a 10 Day Notice, and to recover the filing fee.

The landlord attended the hearing. The tenant did not attend the hearing. As the tenant did not attend the hearing to present the merits of his application, the tenant’s application was **dismissed, without leave to reapply**, after the 10 minute waiting period had elapsed. The hearing continued with consideration of the landlord’s application.

The hearing process was explained to the landlord, and the landlord was given an opportunity was given to ask questions about the hearing process. Thereafter the landlord gave affirmed testimony, was provided the opportunity to present their relevant evidence orally and in documentary form prior to the hearing, and make submissions to me.

The landlord testified that he served the tenant at the rental unit. I have reviewed all evidence before me that met the requirements of the rules of procedure. However, only the evidence relevant to the issues and findings in this matter are described in this Decision.

Issues to be Decided

- Is the landlord entitled to an order of possession under the *Act*?
- Is the landlord entitled to a monetary order under the *Act*, and if so, in what amount?

- What should happen to the tenant's security deposit under the *Act*?

Background and Evidence

The landlord testified that a fixed term tenancy agreement began on October 15, 2013 and was scheduled to revert to a month to month tenancy after November 1, 2014. Monthly rent in the amount of \$1,600.00 was originally due on the first day of each month; however, within the first month, the landlord stated that the tenant requested that internet and satellite television be included in the monthly rent, so by mutual agreement of the parties, the monthly rent was increased to \$1,700.00 and thereafter included internet and satellite television in the monthly rent. The tenant paid a security deposit of \$800.00 at the start of the tenancy, which the landlord continues to hold.

During the hearing, the landlord requested to reduce his monetary claim from \$4,300.00 to \$2,700.00, as the landlord stated that he made a verbal agreement with the tenant prior to the hearing that if the tenant vacated the rental unit at the start of February 2014, that he would not charge the tenant for February 2014 rent. Therefore, the landlord's reduced monetary claim is comprised of the following:

Item 1	Unpaid portion of December 2013 rent due to this portion being paid by cheque, which was returned by the bank as "NSF" (non-sufficient funds)	\$1,000.00
Item 2	Unpaid rent for January 2014	\$1,700.00
	TOTAL	\$2,700.00

The landlord testified that the tenant wrote a cheque for \$1,000.00 of December 2013 rent, which was returned by the bank as "NSF", and as a result, is seeking the unpaid portion of rent for December 2013 in the amount of \$1,300.00.

The landlord testified that the tenant failed to pay rent for January 2014 in the amount of \$1,700.00 and that the tenant vacated the rental unit on February 3, 2014, after being issued a 10 Day Notice dated January 5, 2015, which indicated that \$2,700.00 was owing by the tenant due on January 1, 2014.

The landlord stated that he continues to seek an order of possession as the tenant left some of his personal belongings in the rental unit after he vacated the rental unit on February 3, 2014.

Analysis

Based on the undisputed testimony of the landlord and the documentary evidence before me, and on the balance of probabilities, I find the following.

Test for damages or loss

A party that makes an application for monetary compensation against another party has the burden to prove their claim. The burden of proof is based on the balance of probabilities. Awards for compensation are provided in sections 7 and 67 of the *Act*. Accordingly, an applicant must prove the following:

1. That the other party violated the *Act*, regulations, or tenancy agreement;
2. That the violation caused the party making the application to incur damages or loss as a result of the violation;
3. The value of the loss; and,
4. That the party making the application did whatever was reasonable to minimize the damage or loss.

Items 1 and 2 – The landlord testified that the tenant failed to pay \$1,000.00 of December 2013 rent as the cheque issued by the tenant for that amount was returned by the bank as “NSF”. The landlord also testified that the tenant failed to pay January 2014 rent in the amount of \$1,700.00. Section 26 of the *Act* requires that a tenant pay rent when it is due in accordance with the tenancy agreement, whether or not the landlords comply with the *Act*. Therefore, I find the tenant has breached section 26 of the *Act* by failing to pay \$1,000.00 of December 2013 rent and \$1,700.00 rent for January 2014. Therefore, I find the landlord has met the burden of proof and is entitled to **\$2,700.00** in compensation for unpaid rent as claimed.

The landlord continues to hold the tenant’s security deposit of \$800.00 which has not accrued interest since the start of the tenancy. As the landlord’s claim had merit, **I grant** the landlord the recovery of his **\$50.00** filing fee.

I find that the landlord has established a total monetary claim of **\$2,750.00** as follows:

Item 1	Unpaid portion of December 2013 rent due to this portion being paid by cheque, which was returned by the bank as “NSF” (non-sufficient funds)	\$1,000.00
Item 2	Unpaid rent for January 2014	\$1,700.00
Item 3	Recovery of filing fee	\$50.00
	SUB-TOTAL	\$2,750.00
	<i>Less tenant’s \$800.00 security deposit</i>	<i>-(\$800.00)</i>
	TOTAL AMOUNT OWING BY TENANT TO LANDLORD	\$1,950.00

I ORDER the landlord to retain the tenant’s full security deposit of \$800.00 in partial satisfaction of the landlord’s monetary claim. **I grant** the landlord a monetary order pursuant to section 67 of the *Act*, for the balance owing by the tenant to the landlord in the amount of **\$1,950.00**. This order must be served on the tenant and may be filed in the Provincial Court (Small Claims) and enforced as an order of that court.

Order of possession – Section 55 of the *Act* requires that I must grant an order of possession once I have dismissed the tenant's application to dispute a notice to end tenancy, and the landlord has made a request for an order of possession. As the tenant failed to attend the hearing, and the tenant's application to cancel the 10 Day Notice dated January 5, 2014 was dismissed, **I grant** the landlord an order of possession pursuant to section 55 of the *Act* **effective two (2) days** after service on the tenant. The tenant must be served with the order of possession.

Conclusion

The tenant's application was dismissed in full, without leave to reapply.

The landlord has been granted an order of possession effective two (2) days after service on the tenant. This order must be served on the tenant and may be filed in the Supreme Court of British Columbia and enforced as an order of that court.

The landlord has established a total monetary claim of \$2,750.00 and has been ordered to retain the tenant's full security deposit of \$800.00 in partial satisfaction of the landlord's monetary claim. The landlord has been granted a monetary order pursuant to section 67 of the *Act*, for the balance owing by the tenant to the landlord in the amount of \$1,950.00. This order must be served on the tenant and may be filed in the Provincial Court (Small Claims) and enforced as an order of that court.

This decision is final and binding on the parties, unless otherwise provided under the *Act*, and is made on authority delegated to me by the Director of the Residential Tenancy Branch under Section 9.1(1) of the *Residential Tenancy Act*.

Dated: February 27, 2014

Residential Tenancy Branch

